UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,260	09/24/2003	Yasuomi Ooki	02530029AA	7772

30743 7590 01/31/2008		EXAMINER
WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.		BENGZON, GREG C
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SUITE 340	ART UNIT	PAPER NUMBER
RESTON, VA 20190	2144	

MAIL DATE	DELIVERY MODE
01/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/668,260	Applicant(s) OOKI ET AL.	
	Examiner Greg Bengzon	Art Unit 2144	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>08 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: <u>none</u>.

   Claim(s) objected to: <u>none</u>.

   Claim(s) rejected: <u>1, 7 and 9-17</u>.

   Claim(s) withdrawn from consideration: <u>none</u>.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See attached Sheets</u>.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

WILLIAM VAUGHN
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TECHNOLOGY CENTER 2100

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   Advisory Action Before the Filing of an Appeal Brief   Part of Paper No. 20080129

Response to Arguments

Applicant's arguments filed 01/08/2008 have been fully considered but they are not persuasive.

The Applicant presents the following argument(s) [*in italics*]:

[The prior art]... discloses nothing, whatsoever, of or toward charging a plurality users, in any arrangement, system or method, according to the ratio of each user's recorded bandwidth use to the total of their recorded bandwidth usage.

The Examiner respectfully disagrees with the Applicant.

Moskowitz disclosed a convenience premium for greater bandwidth allocation (Moskowitz-Paragraph 78, *'higher demands for bandwidth'*) and also a need to prevent bandwidth hoarding (Moskowitz-Paragraph 86,*' Some mechanism must be in place to prevent attacks on the system, by a party, who, in effect, tries to corner the market in bandwidth'*). At the same time Moskowitz disclosed (Moskowitz-Paragraph 86) that *the accounting of the bandwidth used should not exceed the value of bandwidth provided.*

The Examiner notes that at the time of the invention it was well-known in the art that the bandwidth usage is often a component in the price charged to the customer by the operator/service provider. Given this knowledge, it would have been obvious to a person of ordinary skill in the networking art to calculate said convenience premium disclosed by Moskowitz, wherein the communication premium is based on a ratio of the

recorded communication band usage for the terminal to a total of the recorded

communication band usage of all of the plurality of terminals.
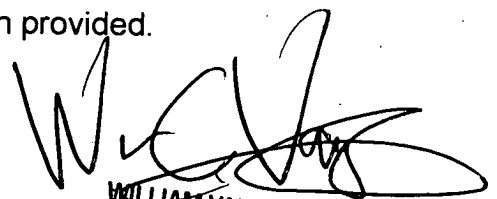

The Applicant presents the following argument(s) [*in italics*]:

As described, the problem with this prior art usage based fee arrangement is that

as multiple users increase their usage the sum total of all the fees charged increases,

irrespective of the management only paying the same fixed [fees] for the common

gateway access... None of the prior art references relied upon, i.e., Moscowitz, Van

Horne and Short, teaches, discloses or suggests anything of, or toward the present

invention's claimed ratio based fee arrangement that solves this problem.

The Examiner respectfully disagrees with the Applicant.

Moskowitz disclosed assigning a price for the bandwidth usage (Moskowitz-

Paragraph 50) and estimating the bandwidth usage offered to users. (Moskowitz-

Paragraph 76)

Furthermore, Moskowitz disclosed (Moskowitz-Paragraph 86) that *the accounting*

of the bandwidth used should not exceed the value of bandwidth provided. A person of

ordinary skill in the networking art would recognize that Moskowitz is addressing the

same issue as presented by the Applicant. With the suggestion by Moskowitz it would

be obvious to implement a charging mechanism wherein the sum total of all the fees

charged to the user do not exceed the value of the bandwidth provided.

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